

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8  
9 WENDY TOWNLEY, *et al.*,

10 Plaintiffs,

11 v.

12 SECRETARY OF STATE ROSS MILLER,  
13 in his official capacity,

14 Defendant.

CASE NO.: 3:12-CV-00310-RCJ-WGC

15 ORDER DENYING AS MOOT  
16 DEFENDANT'S EMERGENCY MOTION  
17 FOR CLARIFICATION OR  
18 MODIFICATION OF ORDER, OR IN  
19 THE ALTERNATIVE, TO ENTER A  
20 WRITTEN ORDER

---

21 The Court denies as moot Defendants Emergency Motion for Clarification or Modification  
22 of Order, or in the Alternative, to Enter a Written Order and strikes the Order (ECF #47) entered  
23 August 30, 2012 setting hearing on the same. On September 5, 2012, the Appellate Court entered  
24 its order staying the entry of a preliminary injunction in this case and specifically terminating this  
25 Court's jurisdiction in the matter. Accordingly the Emergency Motion for Stay Pending Appeal, and  
Motion for Clarification, before this Court is moot.

Judge Reinhardt separately wrote, apparently without any felt inhibition from his colleagues,  
to impugn the personal integrity and motivation of the undersigned judge. Accordingly, I respond.

The Courtroom Deputy for this Court made a docket entry reflecting the minutes of the  
Court's oral hearing on August 22, 2012. It is the practice of this Court, together with many of the

1 District Courts across the country, to make a docket entry in each case reflecting the fact and date  
2 of oral argument on its calendar and the minutes of the hearing. Sometimes the Court will state  
3 orally on the record an actual decision and direct the Clerk to enter its decision as a Minute Order  
4 on the docket. More often, the Court may simply announce its intended decision for the benefit and  
5 convenience of the parties, and make clear that the actual decision will be embodied in a written  
6 order to follow. The later example is what occurred in this case. The docket entry makes clear that  
7 it is a docket entry of the Clerk of the Court and does not contain any minute order. The transcript  
8 of the hearing was also clear in its intendment. Nevertheless the appellate court construed the minute  
9 entry as a final order granting the motion for preliminary injunction. Accordingly, the filing of the  
10 notice of appeal deprived this Court of further jurisdiction.  
11

12 Unfortunately, Judge Reinhardt chose to write separately impugning the personal integrity  
13 and motivation of the undersigned judge. Hopefully, his separate decision does not reflect a trend  
14 in appellate decision writing to attack the integrity and motivation of a colleague or lower court  
15 judge, rather than simply pointing out the error in a lower court opinion. His assertion is false. Judge  
16 Reinhardt writes that the undersigned intended to defeat appellate jurisdiction over the Court's  
17 decisions over this case. Contrary, this Court clearly indicated its intent to embody its decision in  
18 a written order, and it was the clear contemplation of the Court and all the parties that the Defendant  
19 would file a notice of appeal forthwith, following that entry. In fact, for the convenience of the  
20 Defendant and to avoid the need to file a written motion for stay pending appeal, upon oral motion  
21 of the Defendant, this Court indicated its intent to deny the motion for stay pending appeal. All  
22 judges recognize such an oral statement to be for the convenience of the parties and so that they  
23 would have a record of denial by the lower court judge to show the same to the appellate court.  
24 However, it was clear, as stated by the undersigned on the transcript, that this Court intended to  
25

1 embody its decision in a written order which would be entered after the Court further considered the  
2 briefs. This Court has no further jurisdiction to enter such an order, although the undersigned was  
3 considering making revisions to its stated intent to grant the injunction in whole.

4       This case was originally assigned to Senior Judge Edward Reed. Judge Reed has announced  
5 his decision to take no further cases and to reassign all pending cases effective September 30, 2012.  
6 After September 30, 2012 the Chief Judge will have to reassign those cases to other sitting judges.  
7 In the meantime, Judge Reed has decided to transfer some cases on a case by case basis. To date he  
8 has presently submitted several dozen for reassignment. On each such occasion the undersigned has  
9 submitted such cases for random draw, or specifically taken the case if there was a pending  
10 emergency or other time constraint or imposition upon one of my colleagues. Accordingly, I took  
11 reassignment of this case as soon as and immediately after the matter was brought to my attention.  
12 In addition, I attempted to set it for oral argument and hearing at the nearest possible date and to  
13 allow briefing by the parties. The undersigned takes most motions on oral argument and normally  
14 does not enter a decision simply on the briefs. Judge Reinhardt's suggestion of a nefarious  
15 motivation is false.

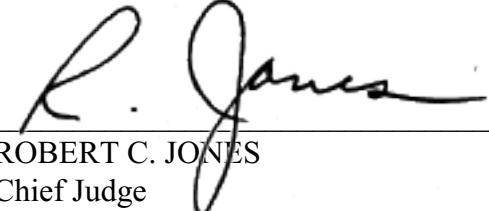
16       The undersigned was quite surprised when Judge Reinhardt contacted my Chambers through  
17 the Ninth Circuit Clerks Office and requested early entry of the order granting preliminary  
18 injunction, in light of a preliminary hearing date set by himself on the Defendants Emergency Motion  
19 to the Ninth Circuit for Stay Pending Appeal. I am not even sure if Judge Reinhardt was on the  
20 motions panel for the month of August, 2012, which panel is designated each month to hear all early  
21 motions in a case. Such contact for the purpose of influencing the lower court's decision and earlier  
22 entry of its order, in order to establish appellate jurisdiction is an inappropriate judicial activity.  
23 Accordingly, and in response thereto I entered an Order (ECF #47) on August 31, 2012 requesting  
24  
25

1 briefs from the parties on the motion for stay pending appeal and setting an oral argument date. The  
2 Order indicated my clear intent to receive the parties written authorities on a stay pending appeal and  
3 to issue a more careful decision thereon.

4 The appellate Court motions panel decision to interpret the Clerk of Court's Docket Entry  
5 (ECF #39) as a final order is wholly appropriate and within its judicial prerogative. Judge  
6 Reinhardt's separate decision to impugn the integrity and motivation of the undersigned judge,  
7 together with his contact to Chambers through the Ninth Circuit Clerks's Office, was an example  
8 of assumption of power by one individual which is not acceptable in our judicial system.  
9

10 IT IS SO ORDERED.  
11

12 DATED: This 5<sup>th</sup> day of September, 2012.  
13

14   
15 ROBERT C. JONES  
16 Chief Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25